

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION**

<b>KIRBY INLAND MARINE, LP</b>	§	
	§	
<b>v.</b>	§	<b>C.A. NO. 3:19-cv-00207</b>
	§	
<b>FPG SHIPHOLDING PANAMA 47 S.A.,</b>	§	
<b>K LINE ENERGY SHIP MANAGEMENT,</b>	§	
<b>and the VLGC GENESIS RIVER, <i>in rem</i></b>	§	

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<b>IN THE MATTER OF KIRBY INLAND</b>	§	
<b>MARINE, LP, in a cause for exoneration</b>	§	<b>Rule 9(h) – Admiralty</b>
<b>from or limitation of liability</b>	§	

**NOTICE OF SETTLEMENT AND  
JOINT MOTION TO APPOINT SPECIAL MASTER**

**TO THE HONORABLE JUDGE OF SAID COURT:**

COME NOW, Liaison Counsel for the OPA Claimants along with counsel for FPG Shipholding Panama 47 S.A., Ship No. 138 Co. Ltd., Ship No. 139 Co. Ltd., Genesis River Shipping, S.A., and “K” Line Energy Ship Management Co., Ltd. (the “Genesis River Interests”) and jointly file this additional Notice of Settlement<sup>1</sup> and Motion to Appoint Special Master:

1. Except as specifically stated herein, all OPA claimants or plaintiffs who have filed claims (of any type) in the consolidated limitations action and all claimants represented by any lawyer or law firm in the consolidated limitations action have agreed

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<sup>1</sup> Liaison counsel and counsel for the Genesis River Interests have previously provided the Court with an informal advisement of the settlement.

to accept the amount specified in Sealed Exhibit A in total to settle their claims against the Genesis River Interests under terms to be recommended by a Court-appointed Special Master. The only remaining OPA claimants or plaintiffs who have filed claims of any type that are not included in this settlement are: (1) Capt. John Wheat (Dkt. 545); and (2) The 426 Chau Law Firm Claimants that filed a May 11, 2022 Motion for Leave to File Untimely Claims [Dkt. 615] in relation to the May 10, 2019 incident giving rise to this litigation. The Genesis River Interests are strongly opposed to the Chau Law Firm Claimants' Motion for Leave to File Untimely Claims, and have submitted a response in opposition to same [Dkt. 617]. A list of the claimants subject to this Notice and Motion is attached as Exhibit B.

2. The Genesis River Interests agree to contribute 50% of the fees for a Court-appointed Special Master up to a maximum of \$50,000.00 paid by the Genesis River Interests. Any amount over \$100,000.00 relating to the fees/expenses of the Court-appointed Special Master will be the sole responsibility of OPA Claimants. The Genesis River Interests will make payment of their share of the Special Master's fees upon presentation by the Special Master of a detailed statement of his services.

3. Upon this Court's acceptance of the Special Master's recommendations and entry of Final Settlement, including funding, all participating parties identified in Exhibit B will release all claims against the Genesis River Interests.

4. Liaison Counsel, by a separate Motion, shall seek a holdback of 7.5% of the total settlement amount for the reimbursement and payment of common benefit expenses and fees.

5. Liaison Counsel for the OPA Claimants along with counsel for the Genesis River Interests respectfully request this Court appoint Daniel J. Balhoff as Special Master and Court-Designated Allocation Neutral pursuant to FED. R. CIV. P. 53 for the purpose of allocating the payment to be made by or on behalf of the Genesis River Interests under the proposed settlement.

6. In support of this Motion and for cause, Liaison Counsel for the OPA Claimants along with counsel for the Genesis River Interests will show this Court that they agree and stipulate that good cause exists for the use of a Special Master and Court-Designated Allocation Neutral to facilitate the allocation of settlement funds in this matter.

7. The parties would further show this Court that Daniel J. Balhoff is a citizen of the State of Louisiana, and is not an attorney for any party to this action. Mr. Balhoff is not related to any party. Mr. Balhoff is willing to perform all of the duties required of him by this Court and to be under orders of this Court. Mr. Balhoff's resume is attached as Exhibit C.

8. Mr. Balhoff is a partner at Perry, Balhoff, Mengis & Burns, L.L.C. in New Orleans, Louisiana, and has been a practicing attorney for over thirty years. He has been appointed to serve as Special Master in numerous cases and settlement allocation assignments, at the Multidistrict Litigation, Federal, and State levels. He currently serves on the Special Master panel for Perry Dampf Dispute Resolutions.

9. The Genesis River Interests have agreed to the proposed appointment of Mr. Balhoff as Special Master. The Genesis River Interests have agreed to pay him ½ of the reasonable compensation for complying with any powers given to him by this Court up to

a maximum total amount of \$50,0000 (i.e., the Genesis River Interests will contribute 50% of Mr. Balhoff's fees up to \$50,000.00), with such payment details to be finalized by the Special Master and the Genesis River Interests.

10. The Special Master's duties will include:

- (A) Establish a framework as determined by the Special Master to allocate settlement funds for all existing claims identified in Exhibit B. As a preliminary matter, the Special Master will determine the minimum payment to be paid to each participating claimant in consideration of the execution of a full and final settlement and release. Such preliminary determination will be made within seven (7) days of any Order Appointing the Special Master. The Special Master may determine the full and final allocation of the settlement value by category of claimants, including but not limited to: (1) Recreational Fishing Guide / Charter Boat Operator; (2) Seafood Captain; (3) Seafood Boat Owner; (4) Seafood Deckhand and Individual Processor; (5) Seafood Wholesale and Bait; (6) Yacht Club and Marina; (7) Retail; (8) Governmental Entity; (9) All Other Tourism; and (10) Property Damage.
- (B) The Special Master may communicate with the Court, the claimants, and the claimants' counsel *ex parte* to facilitate allocation of funds.
- (C) The materials used to determine and apportion the monies do not need to be filed with the Court.

- (D) The Special Master will determine allocation of each settlement within 45 days of entry of the Court's Order Appointing Special Master, and he will deliver such allocation to the law firms representing the subject claimants. Each counsel will have 10 days to review and comment on the allocation. The Special Master's Orders and Findings will be filed under seal with the Court, and served on all parties on the 60th day after the entry of the Order Appointing Special Master.
- (E) Claimants' counsel seeks to allocate common benefit fees and expenses incurred between the following law firms: Matthews, Lawson, McCutcheon & Joseph; Pivach, Pivach, Hufft, Thriffiley & Dunbar, and Cossich Sumich Parsiola & Taylor. The Special Master may consider and grant or disallow any petition for common benefit expense incurred by any other claimants' counsel. To the extent that the Special Master finds that common benefit expenses are to be reimbursed to a claimant's counsel, such monies will be taken from the gross amount of the proposed settlement corpus.

Respectfully submitted,

By: /s/ Dimitri P. Georgantas

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*Liaison Counsel for Claimants*

\* Signed with permission

**CERTIFICATE OF SERVICE**

I hereby certify that on the 5<sup>th</sup> day of July, 2022, I served a true and correct copy of the foregoing pursuant to Rule 5 of the Federal Rules of Civil Procedure, via the CM/ECF system and/or electronic mail and/or by depositing in the United States Mail, postage prepaid and properly addressed to all known counsel of record.

/s/ Dimitri P. Georgantas  
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